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2 CHAPTER 13 STANDING TRUSTEE  
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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 In re: Chapter 13  
11 MICHAEL ALAN MILLER CASE NO. 11-41342 EDJ 13

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13  
14 Debtor, **TRUSTEE'S OBJECTION TO**  
15 **DEBTOR'S MOTION TO MODIFY**  
16 **CHAPTER 13 PLAN**

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18 \_\_\_\_\_/  
19  
20 Martha G. Bronitsky, Chapter 13 Standing Trustee  
21 ("Trustee"), objects to Debtor's Motion to Modify Chapter  
22 13 Plan for failure to complete within sixty months  
23 pursuant to 11 U.S.C. §1329(c).<sup>1</sup>

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25  
26  
27 <sup>1</sup> All code references are to Title 11 of the United States Code  
28 ("Bankruptcy Code") unless otherwise stated.

1 The Trustee also requests that the Court take  
2 judicial notice of its own records in the case herein in  
3 support of the facts set forth below. Fed.R.Evid. 201.

4 **FACTS**

5 Michael Alan Miller ("Debtor") filed this Chapter 13  
6 case on February 7, 2011. Debtor is represented by  
7 Patrick L. Forte.

8 Debtor's Chapter 13 Plan ("plan") was confirmed on  
9 April 5, 2011. The plan proposes payments of \$1,300 for  
10 sixty months. Subsequent to confirmation, U.S. Bank  
11 filed a secured claim for \$93,403.36. (Claim #5). With  
12 this claim, the plan will not fund in sixty months.

13 Debtor filed a Motion to Modify Chapter 13  
14 ("modification") on May 10, 2011. (Doc. #15). The  
15 modification proposes to reduce payments from \$1,300 to  
16 \$1,050 effective June 2011 and forgive arrears. The  
17 reason for the modification is that Debtor's expenses  
18 have increased.

19 Debtor has not filed an objection to U.S. Bank's  
20 claim.

21 **ARGUMENT**

22 **MODIFIED PLAN WILL NOT COMPLETE WITHIN 60 MONTHS OF  
23 CONFIRMED AS REQUIRED BY 11 U.S.C. §1329(c)**

24 Section 1329 of the Bankruptcy Code governs plan  
25 modifications after confirmation. In relevant part,  
26 §1329(c) states -  
27  
28

1 A plan modified under this section may not  
2 provide for payments over a period that expires  
3 after the applicable commitment period under  
4 section 1325 (b)(1)(B) after the time that the  
5 first payment under the original confirmed plan  
6 was due, unless the court, for cause, approves  
7 a longer period, *but the court may not approve*  
8 *a period that expires after five years after*  
9 *such time.*

10 11 U.S.C. §1329 (emphasis added).

11 Debtor's proposed modification will not fund in  
12 sixty months as required by §1329(c). With U.S. Bank's  
13 allowed secured claim, the proposed modified plan will  
14 run 370 months.

15 For the plan to complete in sixty months with the  
16 U.S. Bank's claim, payments must be increased to \$3,400.  
17 Even if Debtor objects to the claim, payments must be  
18 \$1,200 to fund in sixty months with the priority claims  
19 filed by the Internal Revenue Service ("IRS") and  
20 Franchise Tax Board ("FTB").

21 Since Debtor's proposed modified plan will not fund  
22 in sixty months, the Motion to Modify Chapter 13 Plan is  
23 in violation of §1329(c) and cannot be confirmed.

#### 24 CONCLUSION

25 WHEREFORE, the Trustee respectfully objects to  
26 Debtor's Motion to Modify Chapter 13 Plan for failure to  
27 complete plan within sixty months pursuant to §1329(c).

28 RESPECTFULLY SUBMITTED

1        May 31, 2011  
2        DATE

/s/Martha G. Bronitsky 5909  
         Martha G. Bronitsky, Esq.  
         Chapter 13 Standing Trustee

3        /s/Leo G. Spanos                5909  
4        Leo G. Spanos, Esq.  
5        for Martha G. Bronitsky, Esq.  
6        Chapter 13 Standing Trustee

7        /s/Nima Ghazvini                5909  
8        Nima Ghaznini, Esq.  
9        for Martha G. Bronitsky, Esq.  
10       Chapter 13 Standing Trustee